

G-008/C-91-942 PROTECTIVE ORDER

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Cynthia A. Kitlinski
Dee Knaak
Norma McKanna

Chair
Commissioner
Commissioner
Commissioner

In the Matter of the Complaint
of the Minnesota Alliance for
Fair Competition Against
Minnegasco, a Division of Arkla,
Inc.

ISSUE DATE: February 24, 1992

DOCKET NO. G-008/C-91-942

PROTECTIVE ORDER

PROCEDURAL HISTORY

On November 27, 1991, the Minnesota Alliance for Fair Competition (MAC) filed a complaint with the Commission against Minnegasco.

On January 29, 1992, the Commission issued its ORDER SEVERING MINNEGASCO FROM THE INVESTIGATION DOCKET, GRANTING DISCOVERY RIGHTS, REQUIRING REPORT AND AUTHORIZING COMMENT. Among other things, the Commission granted MAC discovery rights and directed the parties to file either a stipulated Protective Order or proposed Protective Orders within ten (10) days.

On February 10, 1992, MAC and Minnegasco made a joint filing with the Commission indicating that they had agreed in large part on a Protective Order, but that two paragraphs remained in dispute.

On February 19, 1992, the Commission met to consider this matter. During the hearing on this matter, MAC and Minnegasco indicated that they agreed with Commission Staff's proposed resolution of the two originally disputed points and additional Order language proposed by Staff.

FINDINGS AND CONCLUSIONS

The first point on which MAC and Minnegasco initially disagreed related to what other parties would be entitled to receive copies of any confidential material generated by discovery in this matter. MAC and Minnegasco agreed that copies of the material could be submitted to the Department of Public Service (the Department) and the Residential Utilities Division of the Office of the Attorney General (RUD-OAG), but Minnegasco opposed MAC's proposal that the material also be provided to the Office of the Attorney General (as distinct from the RUD-OAG) and to the Commissioner of Commerce.

On this point, Commission Staff recommended that confidential materials generated by discovery in this matter should be provided only to the Commission, the Department and the RUD-OAG. At the hearing, MAC withdrew its request that the materials also be provided to the Office of the Attorney General and the Commissioner of Commerce.

The Commission agrees with the parties' new found concurrence on this point. It would not be appropriate to allow MAC to use its discovery rights in this matter to gather information to use in pursuing claims in other forums. No reason for disseminating this information to these additional parties was provided. The Commissioner of Commerce is not even a party to this proceeding. Accordingly, the Commission will adopt a Protective Order that prohibits dissemination of confidential discovery materials to the Office of the Attorney General and the Commissioner of Commerce.

The second point upon which MAC and Minnegasco originally disagreed was the standard for discovery that the Protective Order would enunciate. MAC opposed Minnegasco's proposed language that would limit discovery to relevant information. Commission Staff recommended that the Commission not adopt such limiting language and at the hearing, Minnegasco withdrew this proposed language.

The Commission finds that Minnegasco's proposed language was unsuitable. The Commission finds that the standard enunciated in Rule 26.02 of the Minnesota Rule of Civil Procedure is more appropriate in this case because it is often not known until information is disclosed whether or not it is relevant to a case. Rule 26.02 states:

It is not ground for objection that the information sought will be inadmissible at the trial if that information appears to be reasonably calculated to lead to the discovery of admissible evidence.

The Commission has reviewed the other stipulated portions of the parties' proposed Protective Order and finds that they are reasonable and appropriate for this case.

Language proposed to be added to Ordering Paragraphs 3 and 4 by Commission Staff and agreed to by MAC and Minnegasco is appropriate and will be incorporated. The added language enunciates the Commission's commitment to proper handling of Confidential Material pursuant to specific guidelines that the Commission has adopted for its internal handling of Confidential Material. Other added language clarifies that the Order does not abridge the Commission's or the Department's regulatory duties.

ORDER

1. Minnegasco may designate as "Confidential Material" in the manner set forth in Ordering Paragraph 2 any document, information, or other material sought to be discovered, whether from Minnegasco or from others, by marking the words "Confidential-Protective Order" on the first page of each document. The terms of this Protective Order shall govern all aspects of the procedures to be followed in making or challenging such designations and of the terms, conditions and restrictions on the use of such Confidential Material.
2. Access to the Confidential Material shall be limited to Minnesota Alliance for Fair Competition's (MAC's) counsel, James Larson, and consultants, Dahlen, Berg & Co., but only if, prior to disclosing such Confidential Material, counsel shall have provided a copy of this Protective Order to each person within the firm of Dahlen, Berg & Co. who will be working on the matter and shall have obtained from each of them an agreement in writing in the form attached as Exhibit A stating that he has read this Protective Order and agrees to be bound by its provisions. Copies of Exhibit A executed by such persons shall be provided to Minnegasco.
3. Confidential Material may be provided to the Minnesota Public Utilities Commission (the Commission) and the Department of Public Service (the Department) pursuant to the Commission's Notice of Amended Internal Procedures for Handling Trade Secret Information and to the Residential Utilities Division of the Office of the Attorney General (RUD-OAG), only if the Confidential Material is filed or submitted in a sealed envelope conspicuously marked:

CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER. THE
MATERIAL CONTAINED IN THIS ENVELOPE MAY NOT BE
RELEASED OR INSPECTED EXCEPT BY ORDER OF THE
MINNESOTA PUBLIC UTILITIES COMMISSION OR BY
AGREEMENT OF THE PARTIES.

The Commission and the Department may use Confidential Information obtained in this proceeding to discharge any regulatory duty imposed upon them by law, provided that the disclosure of any Confidential Information shall be governed by this Order and, when not inconsistent with this Order, the Commission's Notice of Amended Internal Procedures for Handling Trade Secret Information or those procedures as they may be amended.

4. Except as provided in Paragraph 3 regarding the Commission and the Department, all Confidential Material shall be used solely for the prosecution and/or defense of this matter and shall not be used for any other purpose. Persons permitted access to Confidential Material pursuant to Ordering Paragraphs 2 and 3 shall not disclose, show or convey any Confidential Material to any person other than as permitted by Ordering Paragraphs 2 and 3. Nothing in this Order shall be deemed to authorize the release of any confidential materials or information previously filed by Minnegasco.
5. Thirty days after the termination of the Commission's investigation in this docket, upon written demand by Minnegasco, Dahlen, Berg & Co. and Mr. Larson shall assemble and return to Minnegasco all such confidential information in their possession.
6. Nothing in the Order shall affect any matter of attorney/client privilege, work product privilege, or any other privilege or immunity.
7. The parties may modify the terms of this Protective Order, but only by written agreement.
8. The terms of this Protective Order shall survive and remain in effect after the termination, settlement, or other disposition of this matter.
9. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)